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No. 88-115

In The

Supreme Court of the United States

October Term, 1988

THE UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED,

Petitioner,

vs.

STATE ESTABLISHMENT FOR AGRICULTURAL PRODUCT TRADING,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENT IN RESPONSE TO PETITION OF THE UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

State Establishment generally accepts the Statement of the Case set forth in Petitioner's brief, but notes that a more objective presentation of the facts is recited in the underlying decision of the Eleventh Circuit Court of Appeals. Several statements made by Petitioner do need correction and clarification.

First, Petitioner failed to point out that State Establishment was not a signatory to the charter party and that the bill of lading contained no arbitration clause; rather, it only obliquely referenced the Charter Party between Marquis Compania Naviera, S.A. and Murray Clayton, Limited, dated December 18, 1981, which required the shipowner to arbitrate disputes with the charterer. Moreover, Petitioner ignores the fact that State Establishment never agreed to arbitrate its disputes, it was never given a copy of the charter party, and it had no knowledge that the charter party contained an arbitration agreement, much less that it required arbitration in a foreign forum that had no nexus whatsoever to the dispute between the parties.

Second, Petitioner implies that State Establishment openly flouted the orders of the district court and chose not to submit its claim to arbitration. The undisputed fact is that State Establishment was not entitled to arbitrate this dispute, and the English arbitrators had no jurisdiction to proceed with this matter. Even Petitioner's English attorney conceded in the lower court that an English court would conclude that State Establishment was not required to arbitrate disputes under the bill of lading.

The Maritime Law Association of the United States has filed a motion to file amicus curiae brief and brief in support of the petition for writ of certiorari pursuant to Supreme Court Rule 36, which Respondent opposes. This motion has not yet been ruled upon by the Court, but in the event it is granted, Respondent will file a response.

SUMMARY OF ARGUMENT

Petitioner argues that the Eleventh Circuit's decision is contrary to the federal policy favoring arbitration. Respondent submits that the decision below, which merely holds that a cargo owner cannot be relegated to arbitration in a foreign forum having nothing whatsoever to do with the transaction, by the purported incorporation into the bill of lading of a document between third parties which he has never seen, in no way detracts from such a policy. Indeed, the Eleventh Circuit expressly acknowledged the strong federal policy in favor of enforcing arbitration agreements, and found that arbitration in and of itself was not per se violative of the Carriage of Goods by Sea Act (COGSA).

This Court has long recognized that the Federal Arbitration Act does not compel arbitration when such a result would interfere with other important federal policies. In the present case, compelling arbitration in a foreign forum that has no connection with either the performance or execution of the bill of lading would conflict with the aim and purpose of the congressional mandate in COGSA, which prevent carriers from lessening their liability.

COGSA was promulgated by Congress as part of an international effort to achieve uniformity and simplication of bills of lading used in international trade. It was intended to reduce uncertainty concerning the responsibilities and liabilities of carriers, the responsibilities and rights of shippers, and the liabilities of underwriters who insure waterborne cargo. By strictly circumscribing the ability of carriers to avoid liability for cargoes in their care, COGSA also greatly enhances the negotiability of bills of lading.

In giving deference to the strong federal policies behind COGSA, the Eleventh Circuit aligned itself with all of the other Circuit Courts which have addressed the issue, and consistently held that a foreign forum selection clause in a bill of lading is unenforceable under COGSA because it lessens the risk of the carrier's liability. Such a clause is also unenforceable under COGSA because it impermissibly deprives State Establishment of its right to have the dispute heard in a U.S. forum. In addition, State Establishment had no actual notice of the existence of the clause. State Establishment was never provided with a copy of the charter party, and the bill of lading was simply an adhesion contract which did not disclose the possibility that an oblique reference to the charter party might be a "booby trap" requiring foreign arbitration. These facts, as well as the limited scope of the arbitration clause at issue, distinguish this case from the decisions relied upon by Petitioner, and present no conflict for resolution by this Court.

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REASONS FOR NOT GRANTING THE WRIT

I. THE ELEVENTH CIRCUIT'S DECISION THAT AN ARBITRATION CLAUSE REQUIRING ARBITRATION IN A FOREIGN FORUM HAVING NO NEXUS TO THE TRANSACTION CONFLICTS WITH IMPORTANT FEDERAL POLICIES PROMULGATED IN COGSA IN NO WAY UNDERMINES THE DECISIONS OF THIS COURT WHICH GENERALLY FAVOR ARBITRATION.

In *State Establishment for Agricultural Product Trading v. Wesermunde,* 838 F.2d 1576 (11th Cir. 1988), the Eleventh Circuit held that a clause requiring arbitration in a foreign country having no connection to either the performance, negotiation or execution of a bill of lading conflicts with the express purpose of COGSA which is to prevent carriers from lessening their risk of liability. The lower court reasoned that requiring a consignee to assert a claim in a foreign forum, where COGSA may not be applied or applied in a manner inconsistent with U.S. interpretations of the Act, would substantially lessen a carrier's liability. In so holding, the Eleventh Circuit noted that arbitration in and of itself was not per se violative of COGSA's provisions.

Petitioner submits that the Eleventh Circuit, in adjudging the arbitration clause in *WESERMUNDE* unenforceable, failed to give proper deference to the federal policy favoring arbitration, pursuant to the Federal Arbitration Act. Petitioner bases its argument on a misconstruction of cases from this Court which involve arbitration in another context, and has relied on the general principle that the federal courts favor arbitration to sug-

gest that any case which refuses arbitration on any ground undermines the precedent of this Court. This Court, as well as the lower courts, have refused to order arbitration when arbitration interferes with other important federal policies.

One illustration is *Wilko v. Swan*, 346 U.S. 427, 74 S.Ct. 182, 98 L.Ed. 168 (1953), where this Court held that a claim made under § 12(2) of the Securities Act of 1933 was not arbitrable even though the securities sales contract contained an arbitration clause. According to this Court, a contractual provision obligating a buyer to waive enforcement of the Securities Act of 1933 was void under the express terms of the Act. Thus, requiring arbitration would deprive the investor of his statutory right to enforcement of the Act in courts of competent jurisdiction, and undermine the very purpose of the Act.

In resolving the conflict in favor of the Securities Act and in voiding the arbitration provision in *Wilko*, the Court examined the legislative history of the Securities Act, and found that it was promulgated to protect investors from more sophisticated and knowledgeable issuers and dealers. This Court reasoned that in waiving a judicial forum, an investor would surrender an advantage of the Securities Act—choice of courts and venue. This is precisely the advantage COGSA intended to give to the consignee by prohibiting deprivation of its right to have cargo disputes resolved in a U.S. forum. *See also Bache Halsey Stuart, Inc. v. French*, 425 F. Supp. 1231, 1234 (D.D.C. 1977) (arbitration of claim under Commodity Act was inconsistent with statutory specification of alternate forum).

In contrast, the authorities which Petitioner cites are factually and legally inapposite to the case at bar, and do not present a conflict with the Eleventh Circuit's decision for several reasons. First, none of the decisions involved COGSA, and the interpretation of the congressional mandate that no clause in a bill of lading can operate to lessen a carrier's liability. Second, none of the decisions addressed the propriety of requiring arbitration in a *foreign* forum that had absolutely no significant relationship to the underlying transaction. Third, and perhaps most important, there was no question in any of the decisions cited by Petitioner that *both* parties had expressly agreed to arbitrate their disputes, and the arbitration clause was actually contained in the underlying agreement (rather than obliquely referenced in an agreement between third parties which had never been seen by the party opposing arbitration).

For example, *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed. 2d 765 (1983) involved the stay of an arbitration dispute which arose from a construction contract signed by both of the parties to the dispute. Neither a foreign arbitration clause, nor a federal statute conflicting with the Federal Arbitration Act was involved. *Shearson/American Express, Inc. v. McMahon,* 482 U.S. —, 107 S.Ct. 2332, 96 L.Ed. 2d 185 (1987) also involved a domestic arbitration clause. *Shearson* holds that the *implied* right of action provided by § 10(b) of the Securities Exchange Act of 1934 does not prevent arbitration, but it does not overrule the principles enunciated in *Wilko* that arbitration may be inappropriate when it interferes with a conflicting policy expressly protected by a federal statute. *Scherk v.*

Alberto-Culver Co., 417 U.S. 506, 94 S.Ct. 2449, 41 L.Ed. 2d 270 (1974) arose from an international contract for the sale of European business enterprises between parties of significant bargaining strength. Considerable uncertainty existed as to whether U.S. law even applied, and there was clearly no conflict between any federal statute and the Federal Arbitration Act. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed. 2d 444 (1985) was an anti-trust suit which concerned an international sales agreement. This Court cited *Wilko* with approval, but found no federal policy against arbitration in the anti-trust statute. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 105 S.Ct. 1238, 84 L.Ed. 2d 158 (1985) involved a domestic arbitration agreement signed by both parties, and was limited to a discussion of state securities law. *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 106 S.Ct. 1415, 89 L.Ed. 2d 648 (1986) arose from a domestic collective bargaining agreement, and the division of responsibility between the courts and arbitrators.

Petitioner has attempted to divert the Court's attention from the facts and legal precedents which are actually being presented for review by relying on broad generalizations to create a specific conflict. On several occasions in its brief, Petitioner makes the erroneous statement that the Eleventh Circuit disregarded this Court's decisions reflecting and implementing a congressional policy favoring arbitration. Petitioner also claims that the Eleventh Circuit "apparently would refuse to enforce an arbitration provision in any contract of carriage" where COGSA was involved. The fallacy of these observations becomes readily apparent upon even a cursory examination of the Eleventh Circuit's decision:

> While we do not believe that arbitration in and of itself is *per se* violative of COGSA's provisions, especially in light of Congress' encouragement of arbitration by its enactment of the Arbitration Act, 9 U.S.C. § 51-14 (1970), the court does believe that a provision requiring arbitration in a *foreign* country that has no connection with either the performance of the bill of lading contract or the making of the bill of lading contract is a provision that would conflict with COGSA's general purpose of not allowing carriers to lessen their risk of liability. (emphasis in original).

In so holding, the Eleventh Circuit cited the decision of this Court in *Dean Witter Reynolds, Inc. v. Byrd,* 470 U.S. 213, 217-221, 105 S.Ct. 1238, 1240-43, 84 L.Ed. 2d 158 (1985) and recognized the strong federal policy in favor of enforcing arbitration agreements. It had no hostility to the general enforcement of arbitration agreements, and contrary to the Petitioner's argument, the Eleventh Circuit was not concerned that the arbitration clause deprived State Establishment of its day in court, but rather, that it lessened the carrier's liability and deprived State Establishment of its statutory right to a U.S. forum.

Although ignored by Petitioner, the Eleventh Circuit made the independent finding that even if the provision requiring arbitration in London, England did not expressly conflict with COGSA's requirement that a carrier may not lessen its liability, a clause requiring foreign arbitration arguably conflicts with COGSA's implied policy that an American forum will be made available to a consignee when a bill of lading is issued subject to the terms of COGSA. Where such a conflict exists, the Circuit Courts have consistently held that, at a minimum, the consignee must be given actual notice of the conflicting provision before en-

tering into the contract. *Swift Textiles, Inc. v. Watkins Motor Lines, Inc.*, 799 F.2d 697 (11th Cir. 1986), *cert. denied*, — U.S. —, 107 S.Ct. 1577, 94 L.Ed. 2d 768 (1987); *Allstate Insurance Co. v. International Shipping Corp.*, 703 F.2d 497 (11th Cir. 1983). *Accord, Siderius, Inc. v. M.V. Ida Prima*, 613 F. Supp. 916 (S.D.N.Y. 1985); *Pacific Lumber & Shipping Co., Inc. v. Star Shipping*, 464 F. Supp. 1314 (W.D. Wash. 1979). Petitioner has not even suggested that this finding is inconsistent with the precedents of this Court, or any other court.

II. THE ELEVENTH CIRCUIT'S DECISION THAT AN ARBITRATION CLAUSE REQUIRING ARBITRATION IN A FOREIGN FORUM IS VIOLATIVE OF COGSA IS CONSISTENT WITH THE PRIOR DECISIONS OF THE CIRCUIT COURTS.

The principles which governed the Eleventh Circuit's decision have been consistently adopted by the lower courts. An arbitration clause in an interstate carrier's standard-form bill of lading was voided on similar policy grounds in *Aaacon Auto Transport, Inc. v. State Farm Mutual Automobile Insurance Co.*, 537 F.2d 648 (2d Cir. 1976) *cert. denied*, 429 U.S. 1042, 97 S.Ct. 742, 50 L.Ed.2d 754 (1977). Section 20(11) of the Interstate Commerce Act provides that any limitation of liability without respect to manner or form in which it is sought to be made is invalid and void. The legislative history of the section indicates that § 20(11) was a remedial statute which, in part, provided shippers in interstate commerce with the right to litigate against a carrier in forums convenient for the shipper.

In *Indussa Corp. v. S.S. Ranborg,* 377 F.2d 200 (2d Cir. 1967) (en banc), the Second Circuit Court of Appeals voided a foreign forum selection clause in a bill of lading as inconsistent with Section 3(8) of COGSA, which prohibits any provision in a contract of carriage from lessening the carrier's liability for negligence, fault or dereliction of statutory duties otherwise than as provided in the Act. According to the Court:

> From a practical standpoint, to require an American plaintiff to assert his claim only in a distant court lessens the liability of the carrier quite substantially . . . and thus is an effective means for carriers to secure settlements lower than if cargo could sue in a convenient forum. *Id.* at 203.

Petitioner has attempted to diminish the importance of *Indussa,* since the Second Circuit noted in a footnote that the ruling did not "touch the question" of arbitration clauses in bills of lading, which require arbitration to be held abroad. 377 F.2d at 204 n.4. Petitioners neglect to note, however, that the Second Circuit subsequently pointed out in *Aaacon,* 537 F.2d at 655, that the thrust of this footnote had been primarily directed to commercial situations where the bargaining power was roughly equal, which was not normally the case with shipping contracts.

In the case at bar, the bargaining power was not equal, and the footnote reservation in *Indussa* does not apply. There was no bargaining. State Establishment was not even provided with a copy of the charter which contained the arbitration clause. The bill of lading made specific reference to COGSA but contained no meaningful notice that the charter party contained a provision requiring arbitration, let alone arbitration in London, England. State

Establishment was given no indication that it would be required to travel to a distant forum, which had absolutely no nexus with the bill of lading, to enforce the rights that were specifically written into the bill of lading.

The support given by *Indussa* to the decision below is recognized by the leading authorities in this field. Gilmore and Black in *The Law of Admiralty*, § 3-25 at 146 n.23 (2d ed. 1975) cite *Indussa* and suggest that arbitration clauses incorporated into bills of lading which unduly restrict a cargo owner's right to relief seem to be "clearly out of line with *Indussa.*"

In *Siderius, Inc. v. M.V. Ida Prima*, 613 F. Supp. 916 (S.D.N.Y. 1985), the court relied upon Gilmore and Black's interpretation of *Indussa* and upon *Aaacon* in holding that a consignee was not bound by a foreign arbitration clause, since it diminished the protection provided by COGSA. The court opined:

> . . . it must be recognized that the consignee under a bill of lading did not bargain with the carrier at all. If the policies of the Arbitration Act and COGSA conflict as to the enforcement of the arbitration clause, it seems to be a weak case for enforcement of the Arbitration Act against a party who did not agree to arbitrate, while it is a strong case for enforcing COGSA in favor of the consignee—an intended beneficiary of its provisions. I believe in those circumstances that the command of COGSA should be held to prevail over that of the Arbitration Act. *Id.* at 920.

In so holding, the court noted that *Aaacon* substantially undercut the suggestion in *Indussa* that such arbitration clauses in an ocean bill of lading might be valid. *Accord, Pacific Lumber & Shipping Co., Inc. v. Star Shipping*, 464

F. Supp. 1314 (W.D. Wash. 1979); *Mitsui & Co. v. M/V Glory River,* 464 F. Supp. 1004 (W.D. Wash. 1978); *Northern Assurance Co. v. M/V Caspian Career,* 1977 A.M.C. 421 (N.D. Cal. 1977).

Recently, the Fifth Circuit Court of Appeals, in *Conklin & Garrett, Ltd. v. M/V Finnrose,* 826 F.2d 1441 (5th Cir. 1987), followed *Indussa* and invalidated a foreign forum selection clause in a bill of lading. The court reasoned that forum selection clauses lessen the liability of the shipper, and are therefore violative of the express command of COGSA. The court found that it was entirely unrealistic to believe that no reduction in the carrier's liability would occur if the cargo owner were required to sue the carrier for damaged cargo in a foreign forum. *Accord, Hughes Drilling Fluids v. M/V Luo Fu Shan,* 852 F.2d 840 (5th Cir. 1988); *Union Insurance Society of Canton, Ltd. v. S.S. Elikon,* 642 F.2d 721 (4th Cir. 1981); *C.A. Seguros Orinoco v. Naviera Transpapel, C.A.,* 677 F. Supp. 675 (D.P.R. 1988). This is precisely what the Petitioner attempted to do in the present case by securing arbitration in a foreign forum having no connection whatsoever with the bill of lading or the dispute between the parties.

The correctness of the lower court's decision is further confirmed by an examination of the important federal policies behind COGSA. As stated by the Eleventh Circuit below:

> The congressional purpose underlying COGSA was part of an international effort to achieve uniformity and simplification of bills of lading used in international trade. *Robert C. Herd & Co. v. Krawill Machinery Corp.,* 359 U.S. 297, 301, 79 S.Ct. 766, 769, 3 L.Ed.2d 820, 823 (1959). It was intended to reduce

> uncertainty concerning the responsibilities and rights of shippers. By strictly circumscribing the ability of carriers to avoid liability for cargoes in their care, COGSA also enhanced the negotiability of bills of lading. *Wirth Ltd. v. S.S. Acadia Forest,* 537 F.2d 1272, 1276-79 (5th Cir. 1976); *Portland Fish Co. v. States Steamship Co.,* 510 F.2d 628, 631-33 (9th Cir. 1974).

Enforcement of a foreign arbitration clause would certainly undermine these policies, especially where the shipper had no actual knowledge that disputes must be decided in a foreign forum with no relation whatsoever to the transaction. Foreign arbitrators may or may not enforce COGSA, or if they did, may not interpret it in the same manner as the drafters intended, or enforced it in the same manner as in U.S. courts. Requiring State Establishment to journey to London, England to assert its claim is wholly unreasonable, unrealistic and impractical, and puts a high hurdle in the way of enforcing liability, in outright contravention of COGSA. Consideration of these factors has led the Eleventh, Fifth, Fourth and Second Circuits all to recognize that COGSA does not permit the carrier to lessen his liability or to avoid a U.S. forum by requiring the consignee to arbitrate or litigate his disputes abroad, particularly where the consignee has no notice of the arbitration provision.

Petitioner has cited a host of district court decisions and one Second Circuit decision, *Son Shipping Co. v. De Fosse & Tanghe,* 199 F.2d 687 (2d Cir. 1952), in support of its position that the ruling of the Eleventh Circuit conflicts with the First, Second, Fifth and Ninth Circuits. One must question Petitioner's efforts to suggest that a conflict exists in the First, Fifth and Ninth Circuits based solely on district court decisions.

The simple fact is that no decision in any of those circuits remotely conflicts with the Eleventh Circuit's opinion, and with regard to the Second Circuit, *Son Shipping* is factually distinct on three grounds. First, the arbitration clause called for arbitration in New York, a U.S. forum, and not some distant, foreign forum having no connection whatsoever to the transaction. The Second Circuit's subsequent decisions in *Indussa* and *Aaacon*, which specifically invalidated clauses that required resort to a foreign forum, are therefore controlling in this case. Second, it was the charterer in *Son Shipping* who sought arbitration, not the holder of the bill of lading. Third, the charter party in *Son Shipping* broadly provided for arbitration of: "Any and all differences and disputes of whatsoever nature arising out of this charter," *id.* at 688, while the arbitration clause in the case at bar applied only to disputes between the ship owner and the charterer, and then only to disputes which were "under the charter party." Even the Petitioner's English lawyer conceded that the arbitration clause in the charter party in the present case would not require arbitration between the parties to the bill of lading.

Recently, the Court in *Continental U.K., Ltd. v. Anagel Confidence Compania Naviera, S.A.*, 658 F. Supp. 809 (S.D.N.Y. 1987) held invalid as to non-signatories like State Establishment an arbitration clause providing for arbitration of disputes arising between only Owners and Charterers. The Court reasoned:

> . . . where the restrictive owner/charterer language is used in the arbitration clause, it is difficult to bind to the clause, one who is not a signatory to the charter party . . . The court has discovered only a few cases

> in addition to those cited by the parties where the narrow scope owners and charterers' language was at issue . . . Arbitration was ordered in only two of these cases . . . In both cases, the nonsignatory had expressly assumed the obligations of the owner or charterer or was otherwise bound by general agency law or contract principals. *Id.* at 814.

Further, while a dispute with a consignee for damages or destroyed cargo might be said to "arise out of" the charter since the charter party authorized the shipment and the bill of lading is collateral to the charter party, such a dispute does not arise "under" the charter party—it arises under the bill of lading. To hold otherwise would negate the fact that the charter party and the bill of lading were two separate and distinct contracts, and there are numerous provisions of the charter party that are personal to the parties thereto and not assumed by a consignee (e.g., freight payment, specifications of the ship, duration of the charter, late days and demurrage charges). Neither State Establishment nor any other consignee should be expected to interpret an arbitration clause relating to disputes "under the charter party", as covering a claim for damage to the cargo covered by a bill of lading expressly incorporating COGSA. *E.g., Production Steel Company of Illinois v. S.S. Francois Ltd.,* 294 F. Supp. 200, 201-02 (S.D.N.Y. 1968); *Savannah Sugar Refining Corp. v. SS Hudson Deep,* 288 F. Supp. 181, 183 (S.D.N.Y. 1968); *Alcoa Steamship Co. v. M/V Nordic Regent,* 453 F. Supp. 10, 12 (S.D. N.Y. 1978).

Other cases cited by Petitioner, *Tai Ping Insurance Co. v. M/V Warschau,* 731 F.2d 1141 (5th Cir. 1984); *Castle & Cooke, Inc. v. Etoile Shipping Co., Ltd.,* 622 F.

Supp. 609 (D.P.R. 1985); *Associated Metals and Minerals Corp. v. M/V Venture*, 554 F. Supp. 281 (E.D. La. 1983); *Mitsubishi Shoji Kaisha, Ltd. v. M.S. Galini*, 323 F. Supp. 79 (S.D. Tex. 1971) all contained a broader arbitration clause. These cases, as well as *Michael v. SS Thanasis*, 311 F. Supp. 170 (N.D. Cal. 1970), are also distinguishable because either (1) no foreign forum was implicated; (2) COGSA was not applicable, or a conflict with its provisions was not raised; (3) the shipper had actual knowledge of the arbitration clause; or (4) the propriety of arbitration was not at issue.

Petitioner also relies on the district court case of *AIU Insurance Co. v. M/V Stamy*, Civ. No. 85-706 (E.D. La. June 24, 1988), which was rendered before the controlling opinion in *Hughes Drilling Fluids v. M/V Luo Fu Shan*, 852 F.2d 840 (5th Cir. 1988). In *Hughes*, the Fifth Circuit held that a clause in the bill of lading which designated China as the forum for any dispute was unenforceable as violative of COGSA. In addition, Petitioner fails to mention that the *AIU court*, itself, distinguished *WESERMUNDE*:

> Further, this Court finds this situation distinguishable from that in *WESERMUNDE*. The agreement in that case was specifically determined to be a form clause of an adhesion contract. That court found that "[n]o reference is made to arbitration in bills of lading. Nothing alerts State Establishment's attention to the possibility that the reference to the charter party may be a 'booby trap,' and, of course, there is no evidence that State Establishment was provided with a copy of the charter party. Here, plaintiffs have made no allegations that a copy of the charter party was not provided, there is no evidence that this was a contract of adhesion, and the arbitration clause is clearly referred to on the face of the bill of lading.

CONCLUSION

Respondent respectfully requests that this Court reject the petition for Writ of Certiorari filed by The United Kingdom Mutual Steamship Assurance Association.

Respectfully submitted,

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